

MEMORANDUM OF LAW

DATE: March 16, 1995

TO: Robert Osby, Fire Chief

FROM: City Attorney

SUBJECT: Application of Building and Zoning Ordinances to State, County or Port District Property

On February 14, 1995, you asked our office to address two questions:

1. Does The City of San Diego have jurisdiction to enforce local rules and regulations on property within the City limits that is owned by the State, County, or Port District when the lessee of the property is using it for private purposes or purely proprietary reasons; and
2. Would the property regulated by the City be only that portion that is being leased for private purposes or purely proprietary reasons.

Attached is a memorandum prepared by Legal Intern Elizabeth W. Hull that answers both questions for which this office adopts as its response. Briefly, our office concluded that the City may regulate properties owned by the State, County or Port District who lease those properties to private lessees who then use the property for purely proprietary or private purposes. On the other hand, if the private lessee uses the property for, or to further a governmental purpose then the City does not have a right to enforce local building and zoning rules and regulations against that lessee.

The answer to the second question is that the City could only regulate that portion of the leased property that is being used for private purposes. If there is a portion of the leased property that is being used for governmental purposes then as to that portion, the City has no legal authority to enforce local building and zoning rules and regulations.

Please call if our office can be of further assistance as it relates to this issue and in particular determining whether a use of property by lessee would be determined to be for private purposes or governmental purposes.

JOHN W. WITT, City Attorney

By
Elmer L. Heap, Jr.
Deputy City Attorney

ELH:mm:633:(x043.2)

Attachment

cc Gerald Cannon, Fire Marshal, M.S. 604
J. Brent Ross, Hazardous Materials Management
Supervisor, M.S. 603
Ann Y. Moore, Deputy City Attorney

ML-95-20